

DEVELOPMENT AGREEMENT

EAGLE MOUNTAIN CITY and EAGLE MOUNTAIN LINKS, LLC for SOUTHMOOR SUBDIVISION – PHASE 2

This Development Agreement, which is referred to herein as the “Development Agreement”, is entered into as of the _____ day of _____, 2013, by and between Eagle Mountain City, Utah, a Utah Municipal Corporation (the “City”) and Eagle Mountain Links, LLC (“Developer”).

This Development Agreement is made with reference to the following facts:

The Developer is the owner of the private land designated on Exhibit 1 (Subdivision Plat) which is the Subdivision Plat for Southmoor Subdivision – Phase 2, approved by Eagle Mountain City for the Developer’s project.

The Developer and the City have engaged in joint development planning for the area described on Exhibit 1 which has been approved by the City.

The Developer will make investments in the construction of on-site infrastructure, related substantially to its properties and the infrastructure will become the property of the City.

Eagle Mountain City Planning Commission and City Council have approved the Subdivision Plat which is Exhibit 1. The City and the Developer wish to preserve and to define specifically the rights and responsibilities of each party with this Development Agreement.

The parties desire to assure fair and equitable treatment for the Developer and the City in the terms and conditions of this Agreement.

Now, therefore, in consideration of the approval of the Subdivision Plat by the City and the following mutual promises, the parties agree as follows:

1. Definitions.

1.1 City's Development Code means the "Eagle Mountain Development Code", the Planning and Zoning Code of the City, adopted by the City pursuant to the Utah Municipal Land Use Planning Enabling Act, Section 10-9a-101 et. seq., U.C.A (as amended).

1.2 City's General Plan means the General Plan adopted pursuant to Section 10-9a-401 et seq, U.C.A (as amended).

2. Rights and Responsibilities of Parties.

2.1 Developer has received in writing the requirements of the City for public works, utilities and other infrastructure improvements which are required as a condition of approval for improvement and construction of the project which is the subject of this Development Agreement. A schedule of required improvements is attached to this Agreement as Exhibit 2 and incorporated herein as though fully set forth. Developer shall comply with all bonding requirements for the public works, utilities and other infrastructure improvements and shall comply with the City's requirement for dedication of water rights prior to the City recording the subdivision Plat.

2.2 Developer will dedicate or cause to be dedicated to the City all of the lands, public facilities and utility easements depicted on the plat which are required to be provided by the Developer, without reimbursement by the City to the Developer unless a separate agreement is entered to the contrary, as a condition of development approval because the required facilities are used by and will primarily benefit the Developer's project. Dedication of the easements and other interests in land for the facilities required under this paragraph shall occur at recordation of the plat and completion and acceptance by the City of the improvements and all of the improvements shall be completed within one year of the recordation of the plat. The City may withhold the issuance of building permits if public improvements are not completed as required.

2.3 Developer shall execute and record the approved Declaration of Covenants, Conditions and Restrictions (Exhibit 3) for the entire plat which include the City as a party for the enforcement of architectural guidelines for construction of homes and which establishes a homeowner's association responsible for the maintenance of the open space and park areas.

2.4 Developer shall complete and receive approval from the City for the park improvements to Southmoor Park as depicted on the Park Improvement Plan, attached hereto as Exhibit 4, prior to issuance of any residential building permits within Project.

2.5 To the maximum extent permissible under the law, it is the intent both of the City and the Developer that subject to the full compliance of the Developer with all conditions, standards and/or requirements of development described more specifically in the Development

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Code, City Construction Standards for facilities and on Exhibit 2, the execution of this Development Agreement grants and vests in Developer all rights, consistent with the City's General Plan, the City's Development Codes, Parks Master Plan and other specific plans, ordinances and plans generally applicable throughout the City, to develop Developer's property as approved in the Subdivision Plan.

2.6 The land areas depicted on the plat approved by the Planning Commission and City Council for public use, which include roads, storm drainage and detention areas and facilities, are dedicated to the City, and shall be completed as defined in Exhibit 2, approved by the City and maintained for the period required by the Development Code after the completion of the improvement by the Developer and the improvement security held by the City shall not be fully released until the Developer has demonstrated to the satisfaction of the City that all public improvements of every kind required to be improved and maintained by the Developer have been completed, including payment in full to all contractors, and maintained as required by this Agreement. Partial releases may be approved upon recommendation of the City Engineer under the provisions of the Development Code and the Ordinance controlling authorization for such releases.

2.7 Special Conditions. Developer shall be responsible for Golf Course netting that will boarder the Driving Range on the left side and the end of the Driving Range. Homeowner will be responsible for HOA approved rear yard fencing on all lots that back to the Driving Range netting. Lots that back to the golf course will have the approved HOA golf course fencing which will be installed by the developer.

3. General Provisions.

3.1 Authority. The parties to this Development Agreement each warrant that they have all of the necessary authority to execute this Development Agreement.

3.2 Time Is Of The Essence. Time is of the essence to this Development Agreement and every right or responsibility shall be performed within the times specified.

3.3 Remedies Upon Default. The City may withhold the issuance of building permits for construction in the subdivision if the Developer is in material default of the requirements of this Agreement or the City Development Code. In the event of the default by any party to this Development Agreement, or the Developer's violation of a material provision of the Development Code, the non-defaulting party shall be entitled to collect from the defaulting party its provable damages, including, but not limited to, its reasonable attorneys' fees and expenses. In addition, the parties acknowledge that the remedies of damages may not always be sufficient and the parties hereby consent to the court's imposition of specific performance and/or injunctive relief. All rights and remedies under this Development Agreement, and/or statute or common law shall be deemed cumulative and the selection of one of the rights or remedies shall not be deemed a waiver of any other right or remedy.

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3.4 Non-Waiver. Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

3.5 Severability. If any provision of this Development Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Development Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Development Agreement shall remain in full force and affect.

3.6 No Joint Venture/No Third Party Beneficiaries. This Development Agreement does not create a joint venture relationship, partnership, or agency relationship between the City and Owner. Further, the parties do not intend this Development Agreement to create any third-party beneficiary rights. The parties acknowledge that this Development Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to Owner's properties unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's. Owner shall have the full and exclusive control of all of Developer's properties.

3.7 Entire Agreement. This Development Agreement is the Entire Agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

3.8 Applicable Law. This Development Agreement is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

3.9 Venue. Any action to enforce this Development Agreement shall be brought only in the Fourth District Court for the State of Utah.

3.10 Notices. All notices required or permitted under this Development Agreement shall be given in writing by certified mail and regular mail to the following address:

To the City: Eagle Mountain City
1650 E. Stagecoach Run
Eagle Mountain, Utah 84005

To the Developer: Eagle Mountain Links, LLC
Attn: Mark Brennan
4128 E Clubhouse Lane

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Eagle Mountain, Utah 84005

The addresses for notice may be modified by either party or their successors by written notice to the other party.

MADE AND ENTERED into as of the date and year first written above.

EAGLE MOUNTAIN LINKS, LLC

Mark Brennan, Vice President

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 2013, personally appeared before me Mark Brennan, who acknowledged to me that he had authority to and did execute the foregoing document on behalf of Eagle Mountain Links, LLC.

Notary Public

EAGLE MOUNTAIN CITY

By: _____
Heather Jackson, Mayor

Attest:

Fionnuala Kofoed, City Recorder

Approved as to form and legality:

Jeremy Cook, City Attorney

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EXHIBIT 1

SUBDIVISION PLAT

EXHIBIT 2

CITY ENGINEERS BONDING REQUIREMENTS

***EXHIBIT* 3**

CC&Rs

EXHIBIT 4

Landscape Plan